

A BILL FOR AN ACT

RELATING TO NON-AGRICULTURAL PARK LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 166E, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

"§166E-A Disposition. (a) Any provision of this chapter to the contrary notwithstanding, the department may dispose of:

(1) Public lands and related facilities set aside and designated for use pursuant to this chapter; and

(2) Other lands and facilities under the jurisdiction of the department pursuant to section 166E-B and notwithstanding chapter 171,

by negotiation, drawing of lot, conversion, or public auction.

Except as provided by subsection (d), the department shall dispose of public lands by lease.

(b) In all dispositions, the department shall be subject to the requirements set forth in rules adopted by the board consistent with section 166E-6 and subject to the following:



1 (1) All land and facilities shall be disposed of for
2 purposes of agricultural or aquacultural activities
3 only;

4 (2) Each lessee shall derive a major portion of the
5 lessee's total annual income earned from the lessee's
6 activities on the premises; provided that this
7 restriction shall not apply if:

8 (A) Failure to meet the restriction results from
9 mental or physical disability or the loss of a
10 spouse; or

11 (B) The premises are fully used in the production of
12 crops or products for which the disposition was
13 granted;

14 (3) The lessee shall comply with all federal and state
15 laws regarding environmental quality control;

16 (4) The board shall:

17 (A) Determine the specific uses for which the
18 disposition is intended;

19 (B) Parcel the land into minimum size economic units
20 sufficient for the intended uses;

21 (C) Make, or require the lessee to make, improvements
22 that are required to achieve the intended uses;



1 (D) Set the upset price or lease rent based upon an
2 appraised evaluation of the property value,
3 adjustable to the specified use of the lot;

4 (E) Set the term of the lease that shall be not less
5 than fifteen years nor more than sixty-five
6 years, including any extension granted for
7 mortgage lending or guarantee purposes; and

8 (F) Establish other terms and conditions it deems
9 necessary, including but not limited to
10 restrictions against alienation and provisions
11 for withdrawal by the board;

12 and

13 (5) Any transferee, assignee, or sublessee of a non-
14 agricultural park lease shall first qualify as an
15 applicant under this chapter. For the purpose of this
16 paragraph, any transfer, assignment, sale, or other
17 disposition of any interest, excluding a security
18 interest, by any legal entity that holds a non-
19 agricultural park lease shall be treated as a transfer
20 of the non-agricultural park lease and shall be
21 subject to the approval of the board and to reasonable
22 terms and conditions, consistent with this chapter or



1 rules of the board that the board may deem necessary.

2 No transfer shall be approved by the board if the
3 disposition of the stock or assets or other interest
4 of the legal entity would result in the failure of the
5 entity to qualify for a non-agricultural park land
6 lease.

7 (c) After notice of the breach or default as provided in
8 rules adopted by the board consistent with section 166E-6, a
9 violation of any provision in this section shall be cause for
10 the board to cancel the lease and take possession of the land.

11 (d) The board may issue easements, licenses, permits, and
12 rights-of-entry for uses that are consistent with the purposes
13 for which the lands were set aside or are otherwise subject to
14 the authority of the department pursuant to section 166E-B.

15 **§166E-B Authority to plan, develop, and manage non-**
16 **agricultural park lands.** In accordance with this chapter, the
17 department may plan, develop, and manage non-agricultural park
18 lands on:

19 (1) Public lands set aside by executive order for use as
20 non-agricultural park lands pursuant to section 171-
21 11;



1 (2) Other lands with the approval of the board that may be
2 subject to a joint venture partnership agreement
3 pursuant to section 166E-C; and

4 (3) Lands acquired by the department by way of
5 foreclosure, voluntary surrender, or otherwise
6 pursuant to section 155-4(11).

7 **§166E-C Non-agricultural park land development.** On behalf
8 of the State or in partnership with a federal agency, a county,
9 or a private party and except as provided in this section, the
10 department may develop non-agricultural park lands that, at the
11 option of the board, may be exempt from all statutes,
12 ordinances, charter provisions, and rules of any governmental
13 agency relating to planning, zoning, construction standards for
14 subdivisions, development and improvement of land, and
15 construction of buildings thereon; provided that:

16 (1) The board finds the development is consistent with the
17 public purpose and intent of this chapter and meets
18 minimum health and safety requirements;

19 (2) The development of the proposed non-agricultural park
20 land does not contravene any safety standards or
21 tariffs approved by the public utilities commission
22 for public utilities;



1 (3) The county in which the non-agricultural park
2 development is proposed shall approve the non-
3 agricultural park development; and provided further
4 that:

5 (A) The county shall approve or disapprove the
6 development within forty-five days after the
7 department submits preliminary plans and
8 specifications for the development to the county.
9 If the county does not disapprove the development
10 after the forty-fifth day, the development shall
11 be deemed approved;

12 (B) No action shall be prosecuted or maintained
13 against any county, its officials, or employees,
14 on any actions taken by them in reviewing,
15 approving, or disapproving the plans and
16 specifications; and

17 (C) The final plans and specifications for the
18 development shall be deemed approved by the
19 county if the final plans and specifications do
20 not substantially deviate from the preliminary
21 plans and specifications. The final plans and
22 specifications for the project shall constitute



1 the planning, zoning, building, construction, and
2 subdivision standards for that development. For
3 purposes of sections 501-85 and 502-17, the
4 chairperson of the board or the responsible
5 county official may certify maps and plans of
6 lands connected with the development as having
7 complied with applicable laws and ordinances
8 relating to consolidation and subdivision of
9 lands, and the maps and plans shall be accepted
10 for registration or recordation by the land court
11 and registrar;

12 and

13 (4) The State shall assume the responsibility of
14 maintaining all roads and infrastructure improvements
15 within the boundaries if the improvements are
16 developed exempt from applicable county ordinances,
17 charter provisions, and rules regarding development.

18 **\$166E-D Lease negotiation.** (a) The department may
19 negotiate and enter into leases with any person who:

20 (1) Holds a revocable permit for agricultural purposes;



1 (2) Has formerly held an agricultural lease or a holdover
2 lease of public land that expired within the last ten
3 years and has continued to occupy the land; or

4 (3) Is determined by the department to have a beneficial
5 impact on agriculture.

6 (b) Lands eligible for lease negotiations under this
7 section are limited to lands that are:

8 (1) Zoned and used for agricultural purposes;

9 (2) Set aside for agricultural uses only, by the governor
10 through an executive order to the department; and

11 (3) Not needed by any state or county agency for any other
12 public purpose.

13 (c) In negotiating and executing a lease as authorized,
14 the board shall:

15 (1) Require the appraisal of the parcel using standards of
16 national appraiser organizations to determine the
17 rental, including percentage rent;

18 (2) Require the payment of a premium, computed at twenty-
19 five per cent of the annual lease rent, with the
20 premium to be added to the annual lease rent for each
21 year of the lease equal to the number of years the



1 lessee has occupied the land, except that the premium
2 period shall not exceed four years; and

3 (3) Recover from the lessee the costs of expenditures
4 required by the department to convert the parcel into
5 leasehold.

6 The department shall notify in writing those eligible for
7 lease negotiations under this section and shall inform the
8 applicants of the terms, conditions, and restrictions provided
9 by this section. Any eligible person may apply for a lease by
10 submitting a written application to the department within thirty
11 days from the date of receipt of notification; provided that the
12 department may require documentary proof from any applicant to
13 determine that the applicant meets eligibility and qualification
14 requirements for a lease.

15 **\$166E-E Policy.** Notwithstanding chapter 171, disposition
16 of lands set aside for use pursuant to this chapter shall not be
17 subject to the prior approval of the board of land and natural
18 resources.

19 **\$166E-F Rights of holders of security interests.** (a)
20 Prior board action shall be required when an institutional
21 lender acquires the lessee's interest through a foreclosure
22 sale, judicial or nonjudicial, or by way of assignment in lieu



1 of foreclosure, or when the institutional lender sells or causes
2 the sale of the lessee's interest in a lease by way of a
3 foreclosure sale, judicial or nonjudicial. The institutional
4 lender shall convey a copy of the sale or assignment as recorded
5 in the bureau of conveyances.

6 (b) Notwithstanding any provisions of this chapter, if any
7 lease is subject to a security interest held by an institutional
8 lender and if the institutional lender has given to the board a
9 copy of the encumbrance as recorded in the bureau of
10 conveyances:

11 (1) If the lease is canceled for violation of any non-
12 monetary lease term or condition, or if the lease is
13 deemed terminated or rejected under bankruptcy laws,
14 the institutional lender shall be entitled to issuance
15 of a new lease in its name for a term equal to the
16 term of the lease remaining immediately prior to the
17 cancellation, termination, or rejection, with all
18 terms and conditions being the same as in the
19 canceled, terminated, or rejected lease, except only
20 for the liens, claims, and encumbrances, if any, that
21 were superior to the institutional lender before the
22 cancellation, termination, or rejection. If a lease



1 is rejected or deemed rejected under bankruptcy law,
2 the lease shall be deemed canceled and terminated for
3 all purposes under state law;

4 (2) If the lessee's interest under a lease is transferred
5 to an institutional lender, including by reason of the
6 provisions of paragraph (1), by reason of acquisition
7 of the lessee's interest pursuant to a foreclosure
8 sale, judicial or nonjudicial, and by reason of an
9 assignment in lieu of foreclosure:

10 (A) The institutional lender shall be liable for the
11 obligations of the lessee under the lease for the
12 period of time during which the institutional
13 lender is the holder of the lessee's interest but
14 shall not be liable for any obligations of the
15 lessee arising after the institutional lender has
16 assigned the lease; and

17 (B) The provisions of section 166E-A(b)(1) and (2)
18 shall not apply to the lease or the demised land
19 during such time as the institutional lender
20 holds the lease; provided that:

21 (i) For non-monetary lease violations, the
22 institutional lender shall first remedy the



1 lease terms that caused the cancellation,
2 termination, or rejection to the
3 satisfaction of the board; and

4 (ii) The new lease issued to the institutional
5 lender shall terminate one hundred twenty
6 days from the effective date of issuance,
7 when the institutional lender shall either
8 sell or assign the lease,
9 after which date section 166E-A(b) (1) and (2)
10 shall apply to the new lease;

11 (3) As long as there is a delinquent loan balance secured
12 by a security interest, the lease may not be canceled
13 or terminated, except for cancellation by reason of
14 default of the lessee, and no increase over and above
15 the fair market rent, based upon the actual use of the
16 land demised and subject to the use restrictions
17 imposed by the lease and applicable laws, may be
18 imposed or become payable, and no lands may be
19 withdrawn from the lease, except by eminent domain
20 proceedings beyond the control of the board, except
21 with prior written consent by the institutional lender



1 and that consent shall not be unreasonably withheld;

2 and

3 (4) If the lease contains any provision requiring the
4 payment of a premium to the lessor on assignment of
5 the lease, any premium shall be assessed only after
6 all amounts owing by any debt secured by a security
7 interest held by an institutional lender shall have
8 been paid in full.

9 (c) Ownership of both the lease and the security interest
10 by an institutional lender shall not effect or cause a merger
11 thereof, and both interests shall remain distinct and in full
12 force and effect unless the institutional lender elects in
13 writing to merge the estates with the consent of the board.

14 (d) The board may include in any consent form or document
15 provisions consistent with the intent of this section as may be
16 required to make a lease mortgageable or more acceptable for
17 mortgageability by an institutional lender.

18 (e) The rights of a purchaser, assignee, or transferee of
19 an institutional lender's security interest, including a junior
20 lien holder, shall be exercisable by the purchaser, assignee, or
21 transferee as successor in interest to the institutional lender;
22 provided that:



1 (1) The purchase, assignment, or transfer shall conform
2 with subsection (b)(4); and

3 (2) The purchase, assignment, or transfer of such rights
4 shall be reserved for and exercisable only by an
5 institutional lender.

6 Other purchasers may not be precluded from acquiring the
7 institutional lender's security interest but shall not have
8 exercisable rights as successor in interest to the original
9 institutional lender.

10 (f) For the purposes of this section:

11 "Institutional lender" means a federal, state, or private
12 lending institution licensed to do business in the state and
13 that makes loans to qualified applicants under this chapter on
14 the basis of a lease awarded pursuant to this chapter for
15 security, in whole or in part, together with any other entity
16 that acquires all or substantially all of an institutional
17 lender's loan portfolio.

18 "Making a loan" means lending of new money or the renewal
19 or extension of indebtedness owing by a qualified applicant to
20 an institutional lender, after June 30, 2006.

21 "Security interest" means any interest created or perfected
22 by a mortgage, assignment by way of mortgage, or by a financing



1 statement and encumbering a lease, land demised by the lease, or
2 personal property located at, affixed or to be affixed to, or
3 growing or to be grown upon the demised land."

4 SECTION 2. Section 166E-2, Hawaii Revised Statutes, is
5 amended by adding a new definition to be appropriately inserted
6 and to read as follows:

7 "Aquacultural activities" means the farming or ranching or
8 any plant or animal species in a controlled salt, brackish, or
9 freshwater environment; provided that the farm or ranch is on or
10 directly adjacent to land."

11 SECTION 3. Section 166E-6, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~f~~]**\$166E-6**[~~}]~~ **Rules.** The board shall adopt rules
14 pursuant to chapter 91, including eligibility requirements for
15 each disposition and applicant qualifications, to effectuate the
16 purposes of this chapter."

17 SECTION 4. In codifying the new sections added to chapter
18 166E, Hawaii Revised Statutes, by section 1 of this Act, the
19 revisor of statutes shall substitute appropriate section numbers
20 for the letters used in the designations of and references to
21 those new sections.



- 1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 6. This Act shall take effect upon its approval.



HB 2271

HD1

SP2

CD1

Report Title:

Public lands; Management

Description:

Allows the Board of Agriculture to manage, develop, and dispose of public lands set aside by a Governor's executive order to the Department of Agriculture. Expressly authorizes the DOA to manage non-agricultural park lands to the same extent it is authorized to manage agricultural parks under its control.
(HB2271 CD1)

